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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44682
Plaintiff-Respondent,)	
)	FREMONT COUNTY NO. CR 2016-274
v.)	
)	
TIMOTHY RAY GREENE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Timothy Greene contends the district court abused its discretion by not further reducing his sentence when it granted his motion for leniency pursuant to I.C.R. 35 (*hereinafter*, Rule 35). Specifically, he asserts the district court's decision was made in light of a clearly erroneous conclusion that Mr. Greene did not suffer from a significant mental illness or other mental health issues despite the fact that the presentence evaluations concluded he suffers from posttraumatic stress disorder, depression, and alcohol dependence/alcohol neurocognitive disorder.

A sufficient consideration of that factor alongside the other mitigating factors reveals that additional reduction of his sentence or retaining jurisdiction would better serve all the goals of

sentencing. Therefore, this Court should either reduce Mr. Greene's sentences as it deems appropriate or remand this case for further reduction of his sentence.

Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Mr. Greene entered an *Alford*¹ plea to an amended charge of felony injury to a child based on allegations that he had sexual contact and/or erotically touched the 17-year-old victim that night. (*See* Tr., pp.29-35.)² He admitted those allegations were possible due to his being drunk that night (New Year's Eve). (*See* Tr., pp.26-27.) He expressed remorse and accepted responsibility for his actions. (*See, e.g.,* Tr., p.28; PSI, p.23.)

During the presentence process, Mr. Greene participated in a GAIN-I evaluation and a psychosexual evaluation (*hereinafter*, PSE). The GAIN-I gave "rule-out" diagnoses for posttraumatic stress disorder, acute stress disorder, or other extreme stress disorder; a mood disorder not otherwise specified; and alcohol dependence.³ (Presentence Investigation Report (*hereinafter*, PSI), p.75.) An ensuing mental health examination report stated that Mr. Greene "presents with SMI [serious mental illness] or other MH [mental health] needs." (PSI, p.90.) The PSE validated those conclusions, explaining Mr. Greene's current full DSM-5 diagnosis

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

² The volume containing the transcripts in this case does not provide line numbers. Additionally, pages 64 and 65 are missing from the volume provided to appellate counsel, which means the electronic page numbers do not match the transcript page numbers after that point. A motion to augment the record with the missing transcript pages has been filed contemporaneously with this brief, and citations to the transcript will be to the transcript page number, not the electronic page number.

³ The ensuing mental health examination report explained that the term "rule out" is used when the GAIN assessor is not licensed to actually make mental health diagnoses, but a diagnosis is generated by the GAIN process. (PSI, p.89.) Thus, such a diagnosis is provisional. (PSI, p.89.)

included major depression, posttraumatic stress disorder, and moderate alcohol neurocognitive disorder.⁴ (PSI, p.131.)

Accordingly, both the mental health examination and the GAIN-I recommended Mr. Greene participate in intensive outpatient treatment. (PSI, pp.85-86, 90-91.) The mental health examination report also noted, if such treatment was not provided, Mr. Greene would likely continue to struggle with his symptoms. (PSI, pp.90-91.) The PSE concluded treatment was possible in the community and indicated that Mr. Greene presented either a low or moderate risk to reoffend.⁵ (PSI, p.95.) However, the PSE also noted that Mr. Greene's responses in the polygraph portion of that examination had showed deception to all the relevant question sets. (PSI, pp.158-59.)

At the sentencing hearing, the district court identified several factors it was considering in aggravation and mitigation. In mitigation, it considered the fact that this was Mr. Greene's first felony, that he had no prior sex offenses, that he had a troubled childhood and was potentially an victim of abuse himself, that he had maintained regular, gainful employment, that his struggles with substance abuse had some bearing on his behavior, and that he had the support of his friends and family. (Tr., pp.72-73.) In aggravation, it considered the nature of the offense, the severity of Mr. Greene's conduct, his non-credible nature of Mr. Greene's account of the events, and the

⁴ The PSE author added a caveat that she would need additional information to make a diagnosis in regard to a substance abuse disorder under the DSM-5 standards. (PSI, p.129.)

⁵ The narrative PSE report states Mr. Greene appears to present a low risk to reoffend. (PSI, p.95.) However, it is not clear from that narrative report whether that conclusion was based on just the results from the STATIC-99 test (on which Mr. Greene scored "0"), or whether it included the results from the STABLE 2007 test as well. (*See* Tr., pp.48-49; PSI, p.95.) Ultimately, the district court concluded it was just based on the STATIC-99 results, and that, by looking at a scale indicator in the PSE, Mr. Greene's combined score indicated a moderate risk to reoffend. (*See* Tr., pp.48-49; PSI, p.94 (noting Mr. Green's total score was 4 and the interpretive ranges were: "0-3 = Low, 4-11 = Moderate") (emphasis omitted).)

fact that he had not apologized directly to the victim. (Tr., pp.73-75.) It did not consider Mr. Greene's mental health issues one way or the other, as it stated: "The mental health assessment indicates that the Defendant suffers from no substantial mental illness earned [sic] and is not in need of mental health treatment." (Tr., p.63.)

Defense counsel ultimately recommended the district court retain jurisdiction so that Mr. Greene could begin treatment and the district court could sentence him with more insight on the issues surrounding the deceptive polygraph. (Tr., p.52.) The district court, however, decided to impose and execute a unified sentence of ten years, with six years fixed. (Tr., p.77.) It also imposed a twenty-five thousand dollar fine. (Tr., p.78.)

Mr. Greene filed a notice of appeal timely from the judgment of conviction. (R., pp.141, 148.) He also filed a timely Rule 35 motion requesting leniency. (R., p. 151.) The district court scheduled a hearing to address the Rule 35 motion and the State's pending motion for restitution.⁶ (See R., pp.160, 169-71.) At that hearing, defense counsel provided a new letter from Mr. Greene's fiancé in support of the motion, which the district court admitted over the State's objections. (Tr., pp.84-85; Exhibit, p.2.) Mr. Greene also made a statement in which he acknowledged the need for, and expressed his dedication to, treatment and rehabilitation, and he also apologized directly to the victim and her family. (Tr., pp.96-98.) As such, the defense requested the district court reconsider its decision to not retain jurisdiction, or alternatively, reduce the term of sentence to two years fixed, with a long period of indeterminate sentence. (Tr., pp.85, 90, 97.) Defense counsel also requested the district court reconsider the amount of the fine based on Mr. Greene's inability to pay the higher amount. (Tr., p.89.)

⁶ The order for \$4,312.00 in restitution for testing of a rape kit in this case (see R., p.166) is not being challenged in this appeal.

The district court explained that it had not retained jurisdiction because, in considering the nature of the crime, it had determined probation was not a viable option in this case, meaning there was no point to retaining jurisdiction. (Tr., p.107.) As a result, it denied Mr. Greene's request for that particular relief. (See Tr., p.107.) However, it granted his motion in regard to the fine, reducing it to ten thousand dollars. (Tr., p.110.) It also explained that it felt reconsideration of the term of sentence was appropriate based on Mr. Greene's comments at the Rule 35 hearing, as well as a more sufficient consideration of the fact that Mr. Greene had been intoxicated that night, which, while not an excuse for his actions, indicated Mr. Greene "was likely not in total possession of his good judgment at the time." (Tr., p.112.) The district court did not discuss Mr. Greene's mental health diagnoses in making that decision. (See generally Tr.) Ultimately though, the district court adjusted the length of the fixed and indeterminate terms of Mr. Greene's sentence, changing it to a unified sentence of ten years, with only four years fixed. (Tr., pp.111-12; R., pp.174-76.)

ISSUE

Whether the district court abused its discretion by not further reducing Mr. Greene's sentence when it granted his Rule 35 motion.

ARGUMENT

The District Court Abused Its Discretion By Not Further Reducing Mr. Greene's Sentence When It Granted His Rule 35 Motion

A motion to alter an otherwise lawful sentence pursuant to Rule 35 is addressed to the sound discretion of the sentencing court, and is essentially a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Huffman*, 144 Idaho 201, 203 (2007). When reviewing an exercise of discretion, the appellate courts evaluate (1) whether

the district court recognized the issue as one of discretion, (2) whether it acted within the outer boundaries of its discretion and consistently with applicable legal standards, and (3) whether it reached its decision in an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). Additionally, when petitioning for a sentence reduction pursuant to Rule 35, the defendant must show his sentence is excessive in light of new or additional information presented to the sentencing court. *Huffman*, 144 Idaho at 203. Therefore, the district court needed to sufficiently consider the recognized sentencing objectives in light of the mitigating factors as they were altered by the new evidence Mr. Greene presented. *See id.*; *Trent*, 125 Idaho at 253.

A review of the record in this case reveals that the district court abused its discretion by not further reducing Mr. Greene’s sentence because it did not reach that decision in accordance with the legal standards applicable to that decision. Specifically, it did not consider the impact of Mr. Greene’s mental health issues on its sentencing decisions as required by statute and Idaho Supreme Court precedent. I.C. § 19-2523; *Hollon v. State*, 132 Idaho 573, 581 (1999). Rather, its sentencing decisions, including its ruling on Mr. Greene’s Rule 35 motion, were made in light of its clearly-erroneous conclusion that Mr. Greene “suffers from no substantial mental illnesses earned [sic] and is not in need of mental health treatment.” (Tr., p.63.)

That conclusion was clearly erroneous because the mental health examination report states precisely the opposite: “Timothy Greene presents with SMI [serious mental illness] or other MH [mental health] needs as noted above in 19-2524 report.” (PSI, p.90; *see* PSI p.25 (repeating that conclusion verbatim in the PSI report itself).) That conclusion was based on the

GAIN-I evaluation's "rule out" diagnosis of "Posttraumatic Stress Disorder, Acute Stress Disorder, or other disorder of extreme stress"; of a "mood disorder [not otherwise specified]"; and of alcohol dependence. (PSI, p.75.) Those diagnoses were verified by the PSE author, who explained Mr. Greene's current full DSM-5 diagnosis included major depression, posttraumatic stress disorder, and alcohol neurocognitive disorder. (PSI, p.131.) Since the district court did not appreciate the fact that Mr. Greene was actually suffering from mental health issues, it did not consider the impact of those conditions in its sentencing decisions.

Furthermore, those mental health conditions may have an impact on one of the issues the district court determined needed to be reconsidered in ruling on Mr. Greene's motion for leniency: Mr. Greene's ability to exercise good judgment the night of the incident. (Tr., p.110 (specifically reassessing the impact Mr. Greene's voluntary intoxication in that regard).) In fact, the Legislature has specifically recognized this connection, instructing sentencing courts to consider the impact of the defendant's mental health issues on "the capacity of the defendant . . . to conform his conduct to the requirements of the law at the time of the offense charged." I.C. § 19-2523(f). Therefore, a sufficient consideration of that mitigating factor, alongside the other relevant mitigating factors in this case, indicates a further reduction of Mr. Greene's sentence was appropriate.

As such, the district court abused its discretion because, due to its clearly erroneous conclusion about the existence of a relevant mitigating factor, it did not make its sentencing decisions consistent with the applicable legal standards.

CONCLUSION

Mr. Greene respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for further reduction of his sentence.

DATED this 31st day of May, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TIMOTHY RAY GREENE
INMATE #121046
C/O FREMONT COUNTY SHERIFF'S OFFICE
146 N 2ND W
ST ANTHONY ID 83445

GREGORY W MOELLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

R JAMES ARCHIBALD
ATTORNEY AT LAW
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas